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|---|--|---|--|--|-----------------|--|-------------------|
| SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS | | | | 1. Requisition Number SEE SCHEDULE | | Page 1 Of 13 | |
| Offeror To Complete Block 12, 17, 23, 24, & 30 | | | | | | | |
| 2. Contract No. DAAE20-02-D-0129 | | 3. Award/Effective Date 2002SEP30 | | 4. Order Number | | 5. Solicitation Number DAAE20-01-R-0227 | |
| 7. For Solicitation Information Call: | | A. Name STEVE PERRY | | B. Telephone Number (No Collect Calls) (309)782-1088 | | 6. Solicitation Issue Date 2002AUG16 | |
| 9. Issued By TACOM-ROCK ISLAND AMSTA-LC-CTC-D ROCK ISLAND IL 61299-7630 e-mail: PERRYS2@RIA.ARMY.MIL | | Code W52H09 | | 10. This Acquisition Is <input checked="" type="checkbox"/> Unrestricted <input type="checkbox"/> Set Aside: % For <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadv Business <input type="checkbox"/> 8(A) SIC: Size Standard: | | 11. Delivery For FOB Destination Unless Block Is Marked | |
| | | | | | | <input checked="" type="checkbox"/> See Schedule | |
| | | | | | | <input checked="" type="checkbox"/> 13a. This Contract Is A Rated Order Under DPAS (18 CFR 700) | |
| | | | | | | 13b. Rating DOA5 | |
| | | | | 14. Method Of Solicitation | | <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP | |
| 15. Deliver To SEE SCHEDULE | | Code | | 16. Administered By DCMA TWIN CITIES BISHOP HENRY WHIPPLE FEDERAL BLDG 1 FEDERAL DRIVE, ROOM 1150 FORT SNELLING MN 55111 | | | |
| Telephone No. | | | | Code S2401A | | | |
| 17. Contractor/Offeror SMITH S J CO INC 3707 W RIVER DR DAVENPORT IA 52802-2411 | | Code 2N560 Facility | | 18a. Payment Will Be Made By DFAS COLUMBUS CENTER DFAS-CO/WEST ENTITLEMENT OPERATIONS PO BOX 182381 COLUMBUS OH 43218-2381 | | | |
| Telephone No. | | | | Code HQ0339 | | | |
| <input type="checkbox"/> 17b. Check If Remittance Is Different And Put Such Address In Offer | | 18b. Submit Invoices To Address Shown In Block 18a Unless Block Below Is Checked <input type="checkbox"/> See Addendum | | | | | |
| 19. Item No. | 20. Schedule Of Supplies/Services | | | 21. Quantity | 22. Unit | 23. Unit Price | 24. Amount |
| | SEE SCHEDULE Contract Expiration Date: 2007DEC30 (Attach Additional Sheets As Necessary) | | | | | | |
| 25. Accounting And Appropriation Data | | | | | | 26. Total Award Amount (For Govt. Use Only) \$0.00 | |
| <input checked="" type="checkbox"/> 27a. Solicitation Incorporates By Reference FAR 52.212-1, 52.212-4. FAR 52.212-3 And 52.212-5 Are Attached. | | | | <input checked="" type="checkbox"/> Are <input type="checkbox"/> Are Not Attached. | | | |
| <input checked="" type="checkbox"/> 27b. Contract/Purchase Order Incorporates By Reference FAR 52.212-4. FAR 52.212-5 Is Attached. Addenda | | | | <input checked="" type="checkbox"/> Are <input type="checkbox"/> Are Not Attached. | | | |
| 28. Contractor Is Required To Sign This Document And Return _____ Copies <input type="checkbox"/> To Issuing Office. Contractor Agrees To Furnish And Deliver All Items Set Forth Or Otherwise Identified Above And On Any Additional Sheets Subject To The Terms And Conditions Specified Herein. | | | | 29. Award Of Contract: Reference DAAE2001R0227 Offer <input checked="" type="checkbox"/> Dated _____. Your Offer On Solicitation (Block 5) Including Any Additions Or Changes Which Are Set Forth Herein Is Accepted As To Items: SEE SCHEDULE | | | |
| 30a. Signature Of Offeror/Contractor | | | | 31a. United States Of America (Signature Of Contracting Officer) | | | |
| 30b. Name And Title Of Signer (Type Or Print) | | 30c. Date Signed | | 31b. Name Of Contracting Officer (Type Or Print) DONNA L WEBB /SIGNED/ WEBBD@RIA.ARMY.MIL (309)782-6369 | | 31c. Date Signed | |
| 32a. Quantity In Column 21 Has Been <input type="checkbox"/> Received <input type="checkbox"/> Inspected <input type="checkbox"/> Accepted And Conforms To The Contract Except As Noted | | | | 33. Ship Number | | 34. Voucher Number | |
| | | | | <input type="checkbox"/> Partial <input type="checkbox"/> Final | | | |
| 32b. Signature Of Authorized Government Representative | | | | 32c. Date | | 35. Amount Verified Correct For | |
| | | | | | | | |
| 32b. Signature Of Authorized Government Representative | | | | 32c. Date | | 37. Check Number | |
| | | | | | | | |
| 41a. I Certify This Account Is Correct And Proper For Payment | | | | 42a. Received By (Print) | | | |
| 41b. Signature And Title Of Certifying Officer | | | | 41c. Date | | 40. Paid By | |
| | | | | | | | |
| | | | | 42b. Received At (Location) | | | |
| | | | | 42c. Date Recd (YYMMDD) | | 42d. Total Containers | |
| | | | | | | | |

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| Name of Offeror or Contractor: SMITH S J CO INC | | |

SUPPLEMENTAL INFORMATION

A-1 This is a five-year Indefinite Delivery Indefinite Quantity (IDIQ) contract for the Electric Arc Welding System, Multiprocess, Portalbe. Orders may only be placed by TACOM-Rock Island at the unit prices as shown on Attachment 005.

A-2 The dates of the ordering periods (OP) covered by this contract are as follows:

- OP#1 Date of award - 30 Sep 2003
- OP#2 01 October 2003 - 30 September 2004
- OP#3 01 October 2004 - 30 September 2005
- OP#4 01 October 2005 - 30 September 2006
- OP#5 01 October 2006 - 30 September 2007

A-3 FOB will be destination for all quantities.

A-4 All delivery orders under this contract will be issued utilizing the unit price reflected in the appropriate ordering period. See Attachment 005.

A-5 The length of the warranty period in solicitation clause FAR 52.212-4 Contract Terms and Conditions (paragraph 0.1.) has been changed from 2 to 3 years as proposed.

A-6 All terms and conditions in solicitation DAAE20-01-R-0227 have been agreed to and are incorporated into this contract.

| *** END OF NARRATIVE A 002 *** | | |
|--------------------------------|-------------------------|--|
| <u>Regulatory Cite</u> | | <u>Date</u> |
| | | <u>Title</u> |
| 1 | 52.204-4500 TACOM-RI | NOTICE OF REQUIREMENT FOR USE OF ELECTRONIC DATA INTERCHANGE (EDI) FEB/1999 |

This solicitation and any resulting contract are subject to the "Required Use of Electronic Data Interchange (EDI)" clause contained in Section H of this document.

(End of clause)

(AS7007)

| | | |
|---|-------------------------|---------------------------------------|
| 2 | 52.233-4503 TACOM-RI | AMC-LEVEL PROTEST PROGRAM JUN/1998 |
|---|-------------------------|---------------------------------------|

(OCTOBER 1996)

If you have complaints about this procurement, it is preferable that you first attempt to resolve those concerns with the responsible contracting officer. However, you can also protest to Headquarters, AMC. The HQ, AMC-Level Protest Program is intended to encourage interested parties to seek resolution of their concerns within AMC as an Alternative Dispute Resolution forum, rather than filing a protest with General Accounting Office or other external forum. Contract award or performance is suspended during the protest to the same extent, and within the same time periods, as if filed at the GAO. The AMC protest decision goal is to resolve protests within 20 working days from filing. To be timely, protests must be filed within the periods specified in FAR 33.103. Send protests (other than protests to the contracting officer) to:

HQ Army Materiel Command
Office of Command Counsel
ATTN: AMCCC-PL
5001 Eisenhower Avenue
Alexandria, VA 22333-0001

Facsimile number (703) 617-4999/5680
Voice Number (703) 617-8176

The AMC-level protest procedures are found at:

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Name of Offeror or Contractor: SMITH S J CO INC

<http://www.amc.army.mil/amc/cc/protest.html>

If Internet access is not available contact the contracting officer or HQ, AMC to obtain the AMC-Level Protest Procedures.

(END OF CLAUSE)

(AS7010)

Name of Offeror or Contractor: SMITH S J CO INC

DELIVERIES OR PERFORMANCE

| | <u>Regulatory Cite</u> | <u>Title</u> | <u>Date</u> |
|---|------------------------|---|-------------|
| 1 | 52.247-34 | F.O.B. DESTINATION | NOV/1991 |
| 2 | 52.247-48 | F.O.B. DESTINATION - EVIDENCE OF SHIPMENT | FEB/1999 |

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SPECIAL CONTRACT REQUIREMENTS

| | <u>Regulatory Cite</u> | <u>Title</u> | <u>Date</u> |
|---|-------------------------|---|-------------|
| 1 | 52.204-4501 TACOM-RI | REQUIRED USE OF ELECTRONIC DATA INTERCHANGE | DEC/1999 |
| (a) Within 90 calendar days after the award of any contract resulting from this solicitation, the Government intends to commence issuing delivery order electronically to the contractor using Electronic Data Interchange (EDI). The American national Standards Institute (ANSI) X12 3050, Version 1 will be used as the format for these electronic transactions. | | | |
| (b) To be eligible to receive an award under this solicitation, the successful offeror must agree to register with the Department of Defense (DoD) Central Contractor Registry (CCR) and (i) to become DoD certified as a Value Added Network (VAN), or (ii) to subcontract with a DoD certified VAN or Value Added Service (VAS) provider. A list of DoD certified VANs can be found at the following World Wide Web (www) site: http://www.ecrc.uofs.edu/cgi-bin/ftp.cgi#dodvans . | | | |
| (c) By submission of an offer in response to this solicitation, the offeror acknowledges and accepts the foregoing requirements. Failure to comply with this requirement within the time specified constitutes default within the meaning of the Contract Terms and Conditions -- Commercial Items clause of this contract and may result in termination under the terms thereof. | | | |
| (d) The registration process, including EDI 838 Trading Partner Profile, may be done electronically at the World Wide Web (www) site: http://www.acq.osd.mil/ec/ . The self-certification or subcontracted VAN/VAS certification must be to the ANSI X12 3050, Version 1 of the 850 Transaction Set (Purchase Order). | | | |
| (e) Registration and certification information must be furnished to the contracting officer within 60 calendar days after award to complete networking requirements within the Government. | | | |
| (f) All required infrastructure for EDI must be in place and operational within 90 calendar days after award of any contract resulting from this solicitation. | | | |
| (g) The Government reserves the right to issue delivery orders electronically or via printed format at its sole discretion. | | | |
| (h) Additional information on the above requirements can be found at the following WWW site: http://www.ecrc.ctc.com . | | | |
| (i) Contractors are encouraged to use the Government funded Electronic Commerce Regional Centers (ECRCs) to implement EDI. Information on ECRC is also at the above (h) site. | | | |

(End of clause)
(HS6507)

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| 2 | 52.246-4500 TACOM-RI | MATERIAL INSPECTION & RECEIVING REPORTS (DD FORM 250) | NOV/2001 |
| (a) Material Inspection and Receiving Report(s) (DD Form 250), are required to be prepared and furnished to the Government under the clause of this contract entitled 'Material Inspection and Receiving Report'. Distribution of reports to the Purchasing Office (in accordance with DoD FAR Supplement Appendix F) shall be accomplished electronically. | | | |
| (b) Two copies of the DD Form 250 are required to be submitted to the Purchasing Office. To satisfy this submission requirement electronically, the completed documents may be transmitted via electronic mail, or data fax. The electronic mail addresses for submission are perrys2@ria.army.mil and AMSTA-LC-CTRL@ria.army.mil . The data fax numbers for submission are (309) 782-6701, ATTN: Steve Perry and (309) 782-8054 (ATTN: Louise Kalal). | | | |
| (c) Any additional copies required in accordance with Appendix F may be submitted to the addresses identified below via the U. S. Postal Service: | | | |
| (1) The FMS/MAP copies may be submitted to: N/A | | | |
| (End of Clause) (HS6510) | | | |

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CONTRACT CLAUSES

| | Regulatory Cite | Title | Date |
|---|-----------------------|--|----------|
| 1 | 52.219-16 | LIQUIDATED DAMAGES - SUBCONTRACTING PLAN | JAN/1999 |
| 2 | 52.229-3 | FEDERAL, STATE, AND LOCAL TAXES | JAN/1991 |
| 3 | 52.232-33 | PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION | MAY/1999 |
| 4 | 52.243-1 | CHANGES - FIXED PRICE | AUG/1987 |
| 5 | 52.244-6 | SUBCONTRACTS FOR COMMERCIAL ITEMS | MAY/2002 |
| 6 | 252.204-7004 DFARS | REQUIRED CENTRAL CONTRACTOR REGISTRATION | NOV/2001 |
| 7 | 252.225-7002 DFARS | QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS | DEC/1991 |
| 8 | 252.225-7037 DFARS | DUTY-FREE ENTRY--ELIGIBLE END PRODUCTS | AUG/2000 |
| 9 | 52.212-5 | CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS | MAY/2002 |

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755); and
- (2) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

- ☒ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).
- ☐ (2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).
- ☒ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999)(if the offeror elects to waive the preference, it shall so indicate in its offer).
- ☐ (4)(i.) 52.219-5, Very Small Business Set-Aside (pub.L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
- ☐ (ii.) Alternate I to 52.219-5.
- ☐ (iii.) Alternate II to 52.219-5.
- ☒ (5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3));
- ☒ (6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4));
- ☐ (7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- ☐ (8)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub.L. 103-355, section 7102, and 10 U.S.C. 2323)(if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- ☐ (ii) Alternate I of 52.219-23
- ☐ (9) 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (Pub. L. 103-355,section 7102, and 10 U.S.C.2323).
- ☐ (10) 52,219-26, Small Disadvantaged Business Participation Program - Incentive Subcontracting (Pub.L.103-355, section 7102, and 10 U.S.C.2323).
- ☒ (11) 52.222-21, Prohibition of Segregated Facilities (Feb 99).
- ☒ (12) 52.222-26, Equal Opportunity (E.O. 11246).

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- ☒ (13) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
- ☒ (14) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- ☒ (15) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
- ☒ (16) 52.222-19, Child Labor - Cooperation with Authorities and Remedies (E.O. 13126).
- ☐ (17)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).
- ☐ (ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- ☐ (18) 52.225-1, Buy American Act - Supplies (41 U.S.C. 10a-10d).
- ☐ (19)(i) 52.225-3, Buy American Act - North American Free Trade Agreement - Israeli Trade Act (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note 19 U.S.C. 2112 note).
- ☐ (ii) Alternate I of 52.225-3.
- ☐ (iii) Alternate II of 52.225-3.
- ☐ (20) 52.225-5, Trade Agreements (19 U.S.C. 2501. et seq., 19 U.S.C. 3301 note.)
- ☒ (21) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 13059, 13067, 13121, and 13129).
- ☐ (22) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- ☐ (23) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- ☒ (24) 52.232-33, Payment by Electronic Funds Transfer - Central Contractor Registration (31 U.S.C. 3332).
- ☐ (25) 52.232-34, Payment by Electronic Funds - Other than Central Contractor Registration (31 U.S.C. 3332).
- ☐ (26) 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- ☐ (27) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a)
- ☐ (28)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).
- ☐ (ii) Alternate I of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated into this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:
- ☐ (1) 52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.). Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1003-4(c) or (d) (see DoD class deviation number 2000-o0006).
- ☐ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
- ☐ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
- ☐ (4) 52.222-44, Fair Labor Standards and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
- ☐ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).
- (d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records - Negotiation.

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(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components-

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);
- (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793);
- (4) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and
- (5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).

(End of clause)

(IF6272)

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| 10 | 52.216-19 | ORDER LIMITATIONS | OCT/1995 |
|----|-----------|-------------------|----------|

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than 1, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor -

- (1) Any order for a single item in excess of 400;
- (2) Any order for a combination of items in excess of 400; or

(3) A series of orders from the same ordering office within 90 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 10 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of Clause)

(IF6029)

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11 52.216-22 INDEFINITE QUANTITY OCT/1995

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 30 December 2007.

(End of clause)

(IF6036)

12 252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR JUL/2002
DFARS EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL
ITEMS

(a) The Contractor agrees to comply with any clause that is checked in the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

X 252.205-7000 Provision of Information to Cooperative Agreement Holders (10 U.S.C. 2416).

252.206-7000 Domestic Source Restriction (10 U.S.C. 2304).

X 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (15 U.S.C. 637).

252.225-7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a-10d, E.O. 10582).

X 252.225-7007 Buy American Act--Trade Agreements--Balance of Payments Program (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note).

X 252.225-7012 Preference for Certain Domestic Commodities.

252.225-7014 Preference for Domestic Speciality Metals (10 U.S.C. 2241 note).

252.225-7015 Preference for Domestic Hand or Measuring Tools (10 U.S.C. 2241 note).

252.225-7016 Restriction on Acquisition of Ball and roller Bearings
(Alternate I) (Section 8064 of Pub. L. 106-259).

252.225-7021 Trade Agreements (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779)

252.225-7028 Exclusionary Policies and Practices of Foreign Governments (22 U.S.C. 2755).

252.225-7029 Preference for United States or Canadian Air Circuit Breakers (10 U.S.C. 2534(a)(3)).

252.225-7036 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program
(Alternate I) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

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_____252.227-7015 Technical Data - Commercial Items (10 U.S.C. 2320).

____252.227-7037 Validation of Restrictive Markings on Technical Data (10 U.S.C. 2321).

_____252.243-7002 Requests for Equitable Adjustment (10 U.S.C. 2410)

_X_252.247-7023 Transportation of Supplies by Sea (_X_Alternate I)
(_X_Alternate II)(10 U.S.C. 2631).

____252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(b) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause of this contract (Federal Acquisition Regulation 52.212-5), the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014, Preference for Domestic Speciality Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023, Transportation of Supplies by Sea (10 U.S.C.2631).

252.247-7024, Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

(IA6720)

13 52.212-4 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS FEB/2002

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights --

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-513). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include --

(i) Name and address of the Contractor;

(ii) Invoice date and number;

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(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and

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all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty.

1. The Contractor will repair or replace, free of charge, any part or welding system delivered under this contract that is defective in material or workmanship, or otherwise fails to perform in accordance with its intended function as stated in DFP 422, Attachment 001. This warranty shall begin upon acceptance by the Government of any part or welding system under this contract (including any part or system repaired or replaced under this warranty) and shall remain in effect for 3 years.

2. The Contracting Officer shall notify the Contractor of any defect covered by this warranty within 90 days after the discovery of the defect. Within 3 working days of such notification, the Contractor shall submit to the Contracting Officer a recommendation for corrective action and include shipping instructions for any part or welding system to be returned for repair or replacement. The Contractor shall comply with the directive of the Contracting Officer to correct the defect at no additional expense. Should the Contracting Officer, using sole discretion, elect to ship the defective part or welding system to a location designated by the Contractor for repair or replacement, the Contractor shall have 10 calendar days from receipt of such part or welding system to repair or replace it and return it to the Government. Transportation charges on parts or welding systems submitted for repair or replacement and any repair or replacement parts or welding systems delivered to the Government under this warranty shall be borne by the Contractor.

3. The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this warranty at no increase in the contract price.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the GOVERNMENT for consequential damages resulting from any defect or deficiencies in the accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at FAR 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(IF7078) (End of Clause)

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LIST OF ATTACHMENTS

| List of Addenda | Title | Date | Number of Pages | Transmitted By |
|--------------------|--|-------------|--------------------|----------------|
| Attachment 001 | DESCRIPTION FOR PURCHASE (DFP-422) | 25-JUL-2002 | 003 | |
| Attachment 002 | PRICING EVALUATION SPREADSHEET | | 001 | |
| Attachment 003 | PACKAGING INSTRUCTIONS | 26-JUN-2002 | 002 | |
| Attachment 004 | STATEMENT OF WORK FOR COMMERCIAL OFF-THE-SHELF (COTS) MANUALS , PORTABLE , MULTIPROCESS, ELECTRIC ARC WELDING SYSTEM , P/N DFP 422 | 24-JUL-2002 | 003 | |
| Attachment 005 | PRICING SHEET | | 001 | |

The following documents are hereby attached by reference and form a part of this acquisition. These documents are available in electronic format on the internet at <http://aais.ria.army.mil/aais/SOLINFO/index.htm>. Vendors should ensure that they have the correct revisions in their possession prior to submitting a bid proposal/quote.

| List of Addenda | Title | Date | Number of Pages |
|--------------------|---|---------|--------------------|
| Attachment 1A | IOC Form 715-3 | FEB 96 | 2 Pgs |
| Attachment 2A | AMCCOM Form 71-R | 01OCT88 | 2 Pgs |
| Attachment 3A | Disclosure of Lobbying Activities (SF-LLL) | | 3 Pgs |
| Attachment 4A | Data Delivery Description - Engineering Change Proposal | JUL 01 | 9 Pgs |
| Attachment 5A | Data Delivery Description - Notice of Revision | JUL 01 | 2 Pgs |
| Attachment 6A | Data Delivery Description - Request for Deviation | JUL 01 | 4 Pgs |

(End of Clause)

(JS7001)